

### **REMARKS**

The present paper is responsive to the Office Action of October 16, 2009.

With regards to the claims, claims 8 and 12-19 were previously canceled without prejudice to filing divisional and/or continuation patent application(s). Claims 1-7, 9-11 and 20-33 are pending. Among pending claims, claims 9-11 and 20-26 are allowed, claims 1, 3-7, 27 and 29-33 are rejected, and claims 2 and 28 are objected to. Claim 20 has been amended with this Amendment and Response to address the Examiner's claim objection. No new matter has been added.

### **Claim Objections**

Claim 20 stands objected to as allegedly having a redundant phrase "a metal tube" in line 3. Also, the Office Action suggests that the article "a" before "metal" in line 4 should be changed to -- the -- or -- said --. Applicant respectfully submits that claim 20 is proper as originally presented as the preamble of the claim is not limiting. In order to expedite the prosecution of this application, however, the preamble of claim 20 has been amended to omit any reference to a metal tube or a metal tube support. Accordingly, the Examiner's claim objection should be withdrawn.

### **The 35 U.S.C. § 102(b) Rejection**

Claims 1, 3, 6, 7, 27, 29 and 32 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 3,809,350 to Lane ("Lane"). Applicant respectfully disagrees and traverses as follows.

MPEP § 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)" (MPEP § 2131 (emphasis added).) "The identical invention must be shown in as

**complete detail** as is contained in the ... claim.’ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)” (*Id.* (emphasis added).)

Applicant respectfully submits that the Office Action failed to establish how “each and every one” of the claimed features is disclosed by Lane. Before analyzing the deficiencies in the teachings of Lane, a brief review of independent claims 1 and 27 is appropriate. Claim 1 claims an apparatus of a tube support bracket that comprises a circular tube-receiving aperture and an annular, castellated collar abutting said aperture, said aperture and collar being sized for receiving therethrough in close-fitting relationship a metal tube, said collar being formed having a plurality of spaced-apart, ***axial tabs sized for swaging against said received metal tube to generate a hoop stress and bite said received metal tube.*** Claim 27 claims a structure of a metal tube and a metal tube support bracket, said structure comprises a circular tube-receiving aperture, and an annular, castellated collar abutting said aperture, said metal tube received within said circular tube-receiving aperture and said collar being swaged against said metal tube and biting into said metal tube, wherein said collar is formed from a plurality of spaced-apart, axial tabs, and wherein ***the swaging of said collar presses said axial tabs against said metal tube to produce a hoop stress against said metal tube and causes said axial tabs to bite into said metal tube thereby locking the tube to the bracket.***

Lane discloses a vent mounting device which comprises a simple adapter plate having a central opening for insertable and adjustable passage of a conventional type vent pipe. The aperture portion of the plate is encompassed by overhanging coordinating tabs that have upwardly flexed or canted inner ends. The inner ends are slightly resilient and which embrace and yieldingly as well as retentively engage that portion of the vent pipe surrounded thereby. In relevant part, Lane teaches:

**In carrying out the principles of the invention the locking tabs, preferably made from a multiplicity of metal pieces of requisite size and shape, are welded in suitably nested relationship and allow the pipe to be slid up but prevent downward movement relative to the support means even when considerable end-thrust weight is applied to the vent pipe. It follows that the pipe is securely erected without becoming undesirably bent or deformed.**

Briefly the adapter plate preferably has planar top and bottom surfaces and is made to fit atop the joists and cross-braces so that it can be nailed in place thereon. The flanged central opening permits passage of the smaller vent pipe therethrough. The pipe opening provided by the flange or collar is equipped with a multiplicity of welded tabs, that is, **tabs which are welded at their outer ends and have inner free ends which are bent slightly upwardly and which are properly nested and contoured to embrace and securely anchor the vent pipe.**

(Lane, column 1, lines 48-67 (emphasis added).)

Lane is merely concerned with a vent mounting device which comprises a simple adapter plate having a central opening for insertable and adjustable passage of a conventional type vent pipe. The flanged central opening permits passage of the smaller vent pipe therethrough. The pipe opening provided by the flange or collar is equipped with a multiplicity of tabs. The tabs are welded at their outer ends and have inner free ends which are bent slightly upwardly and which are properly nested and contoured to embrace and securely anchor the vent pipe. Thus, the tabs disclosed in Lane are bent slightly upwardly to embrace the vent pipe. Contrary to the requirements in claims 1 and 27 that the axial tabs sized for swaging against said received metal tube to generate a hoop stress and *bite* said received metal tube, Lane suggests that “the ends 36 (FIG. 4) are slightly resilient and are curved or canted upwardly. Thus the free ends or tips engage the surfaces of the pipe **without distorting the pipe surfaces.**” (Lane, column 2, lines 64-67.) In other words, the free ends of the Lane disclosure do not *bite* the received metal tube as required by claims 1 and 27 because Lane suggests that the free ends should engage the pipe surfaces without distorting the pipe surfaces.

In view of the foregoing, Lane clearly fails to teach or suggest *axial tabs sized for swaging against said received metal tube to generate a hoop stress and bite said received metal tube* as required by claim 1. Lane also fails to teach or suggest *the swaging of said collar presses said axial tabs against said metal tube to produce a hoop stress against said metal tube and causes said axial tabs to bite into said metal tube thereby locking the tube to the bracket* as required by claim 27.

Accordingly, claims 1 and 27 are patentable over Lane.

A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference. Clearly, Lane does not expressly or inherently teach all of the elements recited in claims 1 and 27. Accordingly, claims 1 and 27 are patentable over Lane under 35 USC §102(b). Because claims 3, 6 and 7 depend from claim 1, and claims 29 and 32 depend from claim 27, claims 3, 6, 7, 29 and 32 are patentable under 35 USC §102(b) for the same reasons stated above.

In addition, Lane fails to teach or suggest that *the collar is formed in a draw-punched region of said support bracket* as required by claims 7 and 32. By contrast, Lane teaches the use of **welding** to fix the tabs to the plate. (See Lane, column 1, lines 48-67.) Clearly, those tabs of the Lane disclosure are originally separated from the plate and can not be formed in any region of the plate, not to mention in a *draw-punched region of the support bracket* as required by claims 7 and 32. Accordingly, claims 7 and 32 are patentable over Lane under 35 USC §102(b).

In the Office Action, claims 1, 3, 6 and 7 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,839,848 to Sahramaa ("Sahramaa"). Applicant respectfully disagrees and traverses as follows.

Sahramaa discloses an interconnected assembly of formed metal members joined to each other by the use of depending collars and through holes. In relevant part, Sahramaa teaches:

Referring to FIG. 1 the metal track in the form of a **U-shape member 1 with a web and flanges 5 and 6 to be joined to a metal stud in the form of a C-shape member 2**, as is standard in the industry, having flanges 7 and 8. The members 1 and 2 have several different terms in the art such as member, plate, stud, track or formed shape. The attachment could also be made between plates, one plate corresponding to flange 6 and the other plate corresponding to flange 8. Two through holes in flanges 7 and 8 surround collars 3, 4 depending inwardly from flanges 5 and 6. A suitable tool head is inserted through track 1 into the interior of stud 2, and is brought to bear against the collars and bends and crimps the collars against the stud 2.

(Sahramaa, column 1, line 60 to column 2, line 5 (emphasis added).)

Thus, Sahramaa discloses an interconnected assembly of an U-shape member (reference number 1 in FIGS. 1 and 3) and a C-shape member (reference number 2 in FIGS. 1 and 3) with some variations (*see* FIGS. 4-10). The interconnection between the members is done by the use of collars (reference numbers 3, 4, 14, 15, 20, 22, 24, 26, 61, 83, 84, 90 and 100 in FIGS. 1, 4, 5, 7, 8, 9 and 10) in one member and through holes (reference numbers 30, 40 and 60 in FIGS. 6 and 7) in another member. Therefore, Sahramaa fails to teach or suggest an apparatus of a tube support bracket as required by claim 1. In fact, nowhere in Sahramaa mentions a “tube” since the Sahramaa disclosure solely concerns the interconnection between two piece of metal members on their flat regions. The collars in Sahramaa are inserted into the holes before the collars are bent over to join the members. As mentioned in Sahramaa, “[a] tool head inserted through the collars and holes and the tool shoulder exert pressure to simultaneously bend and crimp the collar.” (Sahramaa, Abstract.)

In view of the foregoing, Sahramaa clearly fails to teach or suggest *an apparatus of a tube support bracket that comprises a circular tube-receiving aperture* as required by claim 1. Since Sahramaa is totally silent about a tube, Sahramaa also fails to teach or suggest *said aperture and collar being sized for receiving therethrough in close-fitting relationship a metal tube* as required by claim 1. Not to mention that Sahramaa fails to teach or suggest *axial tabs sized for swaging against said received metal tube to generate a hoop stress and bite said received metal tube* as required by claim 1. A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference. Clearly, Sahramaa does not expressly or inherently teach all of the elements recited in claim 1. Accordingly, claim 1 is patentable over Sahramaa under 35 USC §102(b). Because claims 3, 6 and 7 depend from claim 1, claims 3, 6 and 7 are patentable under 35 USC §102(b) for the same reasons stated above.

### **The 35 U.S.C. § 103 Rejection**

Claims 4, 5, 30, 31 and 33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lane. Applicant respectfully traverses as follows.

Lane fails to teach or suggest each and every element as set forth in claims 1 and 27 as described previously in connection with the discussion of the § 102(b) rejection. Therefore, Lane does not render claim 1 or claim 27 obvious. Accordingly, claims 1 and 27 are patentable over Lane under § 103. Because claims 4 and 5 depend from claim 1, directly or indirectly, and claims 30, 31 and 33 depend from claim 27, directly or indirectly, claims 4, 5, 30, 31 and 33 are patentable under 35 USC §103(a) for the same reasons stated above.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sahramaa. Applicant respectfully traverses as follows.

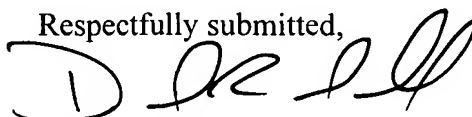
Sahramaa fails to teach or suggest each and every element as set forth in claim 1 as described previously in connection with the discussion of the § 102(b) rejection. Therefore, Sahramaa does not render claim 1 obvious. Accordingly, claim 1 is patentable over Sahramaa under § 103. Because claims 4 and 5 depend from claim 1, directly or indirectly, claims 4 and 5 are patentable under 35 USC §103(a) for the same reasons stated above.

**Conclusion**

In view of the foregoing, reconsideration and allowance of this application are earnestly solicited. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the telephone number listed herein below to discuss any steps necessary for placing the application in condition for allowance.

Dated: February 16, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D A Randall', is written over the typed name.

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